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January 5, 1995

FEDERAL EXPRESS

William F. Caton
Acting Secretary
FEDERAL COMMUNICATIONS COMMISSION
Mail Stop 1170
1919 M Street, N.W. - Room 222
Washington, D.C. 20554

Re: PP Docket No. 93-253, Competitive Bidding Procedures

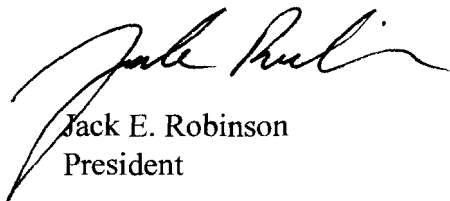
Dear Mr. Caton:

Please find enclosed an original plus 12 copies of a Petition for Reconsideration in the above-referenced matter.

Please stamp and return the 12th copy provided in the stamped, self-addressed return envelope provided to acknowledge your receipt.

Please do not hesitate to contact myself or Bill Kutzke in our Washington office if you have any questions regarding this matter.

Sincerely,



Jack E. Robinson
President

Enclosures

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List A B C D E

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

RECEIVED

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In the Matter of)
)
Implementation of Section 309(j)) PP Docket No. 93-253
of the Communications Act -)
Competitive Bidding)

PETITION FOR RECONSIDERATION

National Telecom, Inc. ("NatTel"), pursuant to Section 1.429 of the Commission's Rules, hereby petitions the Commission to reconsider, on a limited basis, its Fifth Memorandum Opinion and Order ("Order") in this proceeding. FCC 94-285, 59 Fed. Reg. 63210 (December 7, 1994).

INTRODUCTION

NatTel, a broadband PCS Designated Entity ("DE"), is a "small business owned by minorities and/or women" which has been spending the last several months nonstop attempting to raise financing in order to bid at the auction for Entrepreneurs' Block PCS licenses (the "Auction"). NatTel can speak from actual experience and say that the Commission's rules with respect to DEs (the "Rules") have been a tremendous help in allowing DEs to overcome barriers that have impeded our participation in the telecommunications arena, including barriers related to access to capital. In our opinion, the Rules presently satisfy such concerns with respect to the ability of DEs, such as NatTel, to raise sufficient equity capital in order to participate in the Auction.

However, the Rules fall short in allowing DEs to raise sufficient capital with which to construct and build-out PCS systems as required. NatTel believes that minor Rule modifications would solve this problem.

Major communications industry lenders, such as The Toronto Dominion Bank, U.S.A. Division (which has met with the Commission staff to discuss these issues), only really began to focus on the financing needs of DEs since the commencement of the MTA auctions on December 5, 1994, because up until that time they were involved primarily with structuring financing packages for the MTA bidders. As such, NatTel, which has been in the private equity marketplace since late June 1994, has only recently received comments from the private debt marketplace that the Rules, as presently configured, do not allow private lenders to provide build-out debt to DEs.

ARGUMENT

I. THE COMMISSION SHOULD ALLOW DEs TO OBTAIN FINANCING TO BUILD OUT THEIR SYSTEMS

Unless DEs obtain debt financing, they will not be able to meet build-out requirements, and the great strides made by the Commission in getting licenses in the hands of DEs will ultimately be for naught as a large number of DEs default for lack of acquiring sufficient build-out financing. The Rules have effectively precluded DEs from raising build-out funds with equity because of the control group requirements. Thus, DEs have been forced to give up substantially all of their available equity just to get to the Auction and bid on licenses. As such, the only other way to finance build-out costs is with debt.

An excellent example of the importance of debt is McCaw Cellular Communications, Inc. ("McCaw"), although the same holds true for most non-wireline cellular and cable companies. They generally financed their working capital needs and build-out costs with debt -- and, unlike DEs, they didn't have to pay for their licenses.

Prior to McCaw's acquisition by AT&T, McCaw had over \$5 billion in debt. For what purposes did McCaw use the debt? The answer is found in its SEC Form 10-Q for the period ended March 31, 1994:

“[McCaw] utilizes capital to ... complete the construction of and to operate and expand its communications systems, to fund start-up operating losses for its transmitting systems and to cover interest payments on its indebtedness. Moreover, as subscribers are added and usage increases, it will be necessary to make additional capital expenditures for the purchase of additional sites and operating equipment [McCaw] does not expect its operations to generate sufficient cash to meet its expenditure requirements for the next few years. **Historically, [McCaw] has raised capital through the issuance of public indebtedness and bank borrowings.**” (emphasis added)

Building out and growing a wireless business is an extremely capital intensive undertaking. Constructing and operating a wireless system, funding start-up losses, and making interest payments all require large amounts of cash. DEs, which will be in a much more competitive environment than cellular or cable companies ever faced, will have proportionately greater funding needs and must therefore also have the ability to raise debt financing.

Under the existing Rules, DEs are effectively shut out of the debt market because the Commission has not yet ruled specifically on the relationship of the debt to the Government as opposed to the debt needed to build-out and construct the system. A clear decision on this point will determine the ability of DEs to acquire build-out financing.

Third-party lenders must be allowed to hold a senior security interest in DEs, and must also be allowed to foreclose on their collateral in the event of default. Otherwise, no prudent third-party lender will lend any money for PCS build-out to DEs and DE systems will simply not get built -- resulting in DE defaults under the Commission's construction and build-out requirements.

As McCaw's Form 10-Q stated:

"Substantially all [of McCaw's] assets, including its stock in subsidiaries and its ownership interests in entities holding cellular licenses, **are pledged or encumbered as security for indebtedness.**" (emphasis added)

If McCaw had to encumber substantially all of its assets in order to raise financing to build-out its systems, it is fair to say that DEs will be required to do the same. Thus, all NatTel asks is that the Commission modify its Rules so that third-party lenders, which have money to lend to DEs to finance build-out costs, can take a senior credit position and be allowed to foreclose on their collateral, as is ordinarily done in private sector debt transactions.

II. THE COMMISSION'S INSTALLMENT PAYMENT PLAN SHOULD ACCOMMODATE THE CHARACTERISTICS OF THE PRIVATE SECTOR DEBT MARKETPLACE

At present, the vast majority of debt transactions in the private sector are structured so that the principal on the senior debt is repaid before the principal on the subordinated debt. However, under the existing Rules, DEs which qualify as small businesses owned by minorities and/or women must begin making principal payments in year 7. This is problematic because most senior debt transactions have maturities ranging from 7-9 years.

In other words, if a senior lender were to finance a cellular, cable or paging operator today, the senior lender would have its debt mature within the 7-9 year range; knowing that any subordinated debt would have a balloon payment of principal in year 10 or later. Many subordinated debt transactions also include no current-pay interest for the first several years. This type of structure allows the senior lender to recoup its principal before the subordinated lenders. This is the normal way in which dual-structure debt transactions are consummated in the private sector; particularly for industries (such as PCS) that do not expect to generate positive cash flow for several years.

Given this private sector reality, NatTel requests that the Commission, at least for DEs which qualify as small businesses owned by minorities and/or women, modify its Rules so that such DEs amortize their debt to the Commission with interest-only payments throughout the entire 10-year term, with a balloon payment of principal made at the end of the 10th year.

This modification will have two key advantages. First, under the current Rules, principal payments start to come due at the same time the DE is permitted to transfer the license (during the 6th year). However, this will likely result in many DEs being forced to cash out during the 6th year when it is possible that DE businesses will have not yet begun to turn the corner financially. (McCaw didn't report its first quarterly profit until 1994, 10 years after its initial acquisition of licenses!). This will, in turn, result in DEs being forced to sell at less than fair market value in a "fire sale" just to avoid the first principal payment to the Commission.

However, by postponing principal payments until the 10th year, the Commission will give DEs who want to stay in business through the entire term of the initial license grant a viable chance to do so without being forced to sell out at less than fair market value during the sixth year as the first principal payment looms.

The second advantage to a principal balloon payment at the end of the 10th year is that, from a government accounting standpoint, the Government should be indifferent as to when it receives its principal. Whether the Government receives principal amortized over years 7-10 or whether it receives all the principal in year 10 will not have any effect on the Government ultimately receiving the total purchase price for the license. But it will greatly enhance the ability of DEs to raise senior debt financing because the senior lenders will see that they can get their principal repaid before that of the subordinated lender (the Government) just as with any normal debt transaction that is consummated in the private sector today.

Nor should the Commission be concerned that DEs which qualify as small businesses owned by minorities and/or women will gain an unfair advantage over other DEs by having a balloon payment of principal due in the 10th year. In the Order, the Commission leveled the playing field for all DEs by making installment payments available for all Entrepreneurs' Block licensees. Furthermore, the gradation of installment payment benefits accorded certain "levels" of DEs accurately reflects the comparative difficulty of those DEs in obtaining financing. Thus, there should not be any large-scale concern that the most disadvantaged DEs, small businesses owned by minorities and/or women, are allowed to make a balloon payment of principal in the 10th year.

III. THE COMMISSION SHOULD MAKE SPECIFIC RULE MODIFICATIONS IF IT WANTS TO ACHIEVE ITS OBJECTIVES REGARDING DEs

The underlying basis of NatTel's suggested Rule modifications is to make sure that third-party lenders can acquire a senior credit position in DEs as well as foreclose on their collateral if a DE defaults. (Just as the Commission can foreclose on the license if a DE defaults on its installment payments). However, in suggesting these modifications NatTel is also mindful of the Commission's concerns regarding unjust enrichment and the risk of DE benefits ultimately accruing to non-DEs. Ever mindful of these concerns, NatTel believes the modifications suggested below reach a satisfactory middle ground between regulatory policy and private sector financial reality.

FIRST, the Commission should amend Section 24.711(b) of the Rules to clarify that installment payments owed to the Commission from DEs for license acquisition shall be subordinate to any and all debt provided to DEs from third-party lenders; provided, however, that such third-party debt is incurred by DEs to build-out and construct their PCS systems, and not for license acquisition.

SECOND, the Commission should amend Section 1.2110(d)(4) of the Rules in the following manner:

1. Section 1.2110(d)(4)(ii) should be amended to provide for an automatic 90-day grace period in the event of default under the installment payment plan;

2. Section 1.2110(d)(4)(iii) *should be amended to provide that following the automatic grace period, if the Commission has not approved a restructured payment schedule or there is no successful resumption of payment; a third-party lender which has a valid security interest in a DE may foreclose on such collateral and assign or transfer such collateral to another DE, not later than 180 days after the end of the grace period, without being in violation of the transfer restrictions requiring a minimum three-year holding period, and without the Commission considering the license cancelled; and*

3. Section 24.839(d)(2) should be amended to allow for an application for assignment or transfer of control of a license to be filed at any time by a third-party lender which has foreclosed on a DE as long as the application is filed within 180 days after the end of the grace period; and not just after three years from the date of the initial license grant. The unjust enrichment rules would continue to apply in this case, so that if a third-party lender forecloses on a DE and assigns or transfers the collateral controlling the DE license to a DE eligible for less advantageous installment payments and/or bidding credits, the successor DE to the foreclosed license would have to satisfy the unjust enrichment requirements.

THIRD, the Commission should amend Section 24.711(b)(5) of the Rules to provide that installment payments for small businesses owned by minorities and/or women shall include interest-only for the entire term of the license grant with the entire amount of principal due in a balloon payment at the end of the 10th year.

NatTel does not believe that the Rules should allow Entrepreneurs' Block licenses to eventually, before the end of the fifth year, end up in the hands of non-DEs after foreclosure. If this were the case, NatTel believes that the potential for "sham foreclosures" would be unacceptably high. True, lenders which foreclose on DEs will have a smaller universe of potential transferees if they are required to transfer the license to another DE; but NatTel believes that the harm avoided by maintaining this requirement is much greater than the benefits to be gained by not doing so.

NatTel does not believe that it is necessary for the Commission to enter into intercreditor agreements with third-parties in order to clarify the relative rights held by licensees' creditors. The Commission is going to have its hands full just administering the DE program as it stands let alone having to negotiate intercreditor agreements with myriad third-party lenders. NatTel believes that the preferred course is merely to clarify that the debt owed pursuant to the Commission's installment payment plan will be subordinate to build-out debt provided by third-party lenders. The Commission would be well served to allow the private sector negotiation process to take over from there.

CONCLUSION

These slight modifications to the Rules suggested herein will make it possible for DEs to raise capital in order to finance the significant costs that will arise from constructing and building out our PCS systems for the benefit of consumers, funding working capital needs, making the required installment payments to the Commission, and financing the acquisition of additional PCS and/or cellular licenses in the after-Auction market. Without these Rule modifications, DEs will not be able to raise debt financing for post-Auction obligations; obligations which definitely will dwarf the cost of acquiring the licenses.

By making these modifications to the Rules, the Commission will be able to remain true to its statutory and stated administrative goals with respect to DEs. But more importantly, the Commission will ensure that DEs do not fail to implement their build-out plans for lack of financing. As stated in the December 19, 1994 issue of Business Week (p. 24), "Banks are the major source of credit for small and medium-size businesses. And such businesses are largely responsible for the sharp pickup in job creation we've seen over the past year." The Commission's Rules should not have the effect of cutting DEs off from their "major source of credit."

NatTel therefore respectfully requests that the Commission, on the limited basis described herein, reconsider the Order and make the modifications suggested herein. Such reconsideration is acutely necessary and wholly warranted; and should be granted, if at all possible, before the Form 175 deadline for DEs on February 28, 1995.

Dated: January 6, 1995

Respectfully submitted,

NATIONAL TELECOM, INC.

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